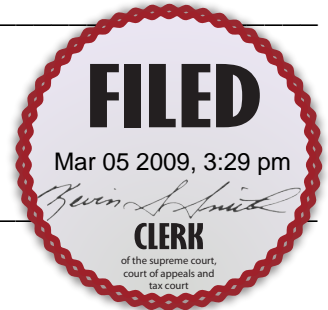


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**IN THE
INDIANA TAX COURT**



M.D. CURTIS MANAGEMENT CO., INC.
by RAYMOND L. CURTIS, owner,

Petitioner,

v.

INDIANA BOARD OF TAX REVIEW,
LAKE COUNTY PROPERTY TAX
ASSESSMENT BOARD OF APPEALS,
and NORTH TOWNSHIP ASSESSOR,

Respondents.

Cause No. 45T10-0707-SC-39

ON APPEAL FROM THE FINAL DETERMINATION
OF THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
March 5, 2009

FISHER, J.

M.D. Curtis Management Company, Inc., by its owner Raymond L. Curtis (Curtis), challenges the final determination of the Indiana Board of Tax Review (Indiana Board) which upheld the North Township Assessor's (Assessor) assessments of his real

property for the 2001, 2002, and 2003 tax years (tax years at issue).¹ While Curtis raises several issues on appeal, the Court consolidates and restates them as:

- I. Whether Curtis's procedural due process rights were violated during the administrative process; and
- II. Whether the Indiana Board's final determination was improper.

FACTS AND PROCEDURAL HISTORY

During the tax years at issue, Curtis owned a parcel of land located on Indianapolis Boulevard in East Chicago, Indiana. Prior to September 13, 2001, a building containing both general retail space and apartment units was located on the parcel. On September 13, 2001, the building was severely damaged by a fire.

For the 2001 tax year, the assessed value of Curtis's real property was \$7,270 (\$2,500 for land and \$4,770 for improvements); in turn, for both the 2002 and 2003 tax years Curtis's land was assessed at \$33,700.^{2,3} Believing that these values were too

¹ In his brief, Curtis has also asked the Court to "remove" the assessments on the subject property back to 1995. (See Pet'r Br. at 1.) The Court DENIES Curtis's request, as the Certified Administrative Record ("Record") in this matter indicates that Curtis filed Petitions for Correction of Error for the 2001 to 2003 tax years only. (See, e.g., Cert. Admin. R. at 4-7, 12-19.)

² While the Record does not contain definitive evidence as to the subject property's assessed value for the 2001 tax year (i.e., its assessed value as of the March 1, 2001 assessment date); it does contain evidence of the subject property's assessed value as of September 13, 2001. (See Cert. Admin. R. at 80.) The Court therefore presumes that the latter assessed value reflects the former assessed value.

³ Likewise, the Record contains no definitive evidence as to the subject property's assessed value for the 2002 and 2003 tax years. During the administrative hearing, however, the Administrative Law Judge indicated that the 2004 assessed value of the land (according to the Assessor's website) was \$33,700. (See Cert. Admin. R. at 211-12.) Curtis agreed that that value probably reflected his property's 2002 and 2003 assessed values as determined by the Assessor. (Cert. Admin. R. at 212.) Thus, the Court assumes that the land was valued at \$33,700 for the 2002 and 2003 tax years.

high, Curtis filed Petitions for Correction of Error (Forms 133), first with the Lake County Property Tax Assessment Board of Appeals, and then with the Indiana Board.

On March 14, 2007, the Indiana Board held a hearing on Curtis's Forms 133. Neither the Assessor nor anyone one representing the Assessor's interests appeared at the hearing. Throughout the hearing, Curtis maintained that his assessments should be adjusted to reflect his property's loss in value due to both the presence of obsolescence in his building and the various abnormalities that had impacted his land. On June 6, 2007, the Indiana Board issued its final determination in which it concluded that Curtis failed to demonstrate that his building was entitled to an obsolescence adjustment or that his land was entitled to an influence factor adjustment.

On July 17, 2007, Curtis initiated this original tax appeal. The Court heard the parties' oral arguments on March 14, 2008. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

This Court gives great deference to final determinations of the Indiana Board when it acts within the scope of its authority. See *College Corner, L.P. v. Dep't of Local Gov't Fin.*, 840 N.E.2d 905, 907 (Ind. Tax Ct. 2006). Consequently, the Court will reverse a final determination of the Indiana Board only if it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or

(5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2009). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osoło Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

I. Whether Curtis's due process rights were violated during the administrative process

The Indiana Board, while an administrative body, is vested with quasi-judicial powers. See IND. CODE ANN. §§ 6-1.5-4-1, -5-1 to -5 (West 2009 & Supp. 2008). When an agency acts in a quasi-judicial capacity, it must accord due process to those parties whose rights will be affected by its actions. See *Ennis v. Dep't of Local Gov't Fin.*, 835 N.E.2d 1119, 1122 (Ind. Tax Ct. 2005) (citation omitted). "Procedural due process requires that taxpayers be provided with notice and a meaningful opportunity to be heard before a tax liability is finally fixed." *Griffin v. Dep't of Local Gov't Fin.*, 794 N.E.2d 1171, 1176 (Ind. Tax Ct. 2003) (citation omitted), *review denied*.

Curtis contends that two aspects of the administrative process violated his procedural due process rights. First, Curtis asserts that the Administrative Law Judge (ALJ) who conducted the administrative hearing imposed an unreasonable time restraint on the hearing, thereby preventing him from presenting all of his evidence. (See Pet'r Br. at 3.) Second, Curtis asserts that the Indiana Board did not "submit or transcribe the audio tape recordings" that were admitted into evidence during the administrative hearing. (Pet'r Reply Br. at 1.) Both of Curtis's assertions, however, are misplaced.

As mentioned, Curtis was the only party that appeared for the administrative

hearing. At the hearing he offered, and the ALJ accepted, over ninety exhibits into evidence. (See Cert. Admin. R. at 53-205.) In order to facilitate this evidentiary presentation, it appears that the ALJ allowed Curtis to exceed the previously established time parameters. (See Cert. Admin. R. at 333 (where shortly before concluding the hearing, the ALJ stated, “We need to wrap this up. We’re well over time”).) Furthermore, the only evidence the ALJ refused to accept was Curtis’s “Nipsco bills” which, as the ALJ properly explained, were irrelevant to his property’s assessed value. (See Cert. Admin. R. at 334.) Therefore, Curtis has not established that the alleged time limitation violated his procedural due process rights.⁴

Finally, and contrary to Curtis’s assertion, the Indiana Board did not have a duty to transcribe the audio tapes that he submitted into evidence. Rather, the Indiana Board must only ensure (as it has done here) that the audio tapes were included in the record for judicial review. See IND. CODE ANN. § 6-1.1-15-6(b) (West 2009) (explaining what the record for judicial review must contain). Accordingly, Curtis has not demonstrated that the Indiana Board’s failure to transcribe his audio tape evidence violated his procedural due process rights.

II. Whether the Indiana Board’s final determination was improper

On appeal, Curtis has argued that the Indiana Board’s final determination was erroneous because it failed to recognize that “a progressive accumulation of negative events” had significantly reduced the value of his property. (See Oral Argument Tr. at 6-9; Cert. Admin. R. at 238.) According to Curtis, the evidence he presented at the

⁴ Even if the Court assumes (for the sake of argument) that Curtis had other evidence to present at the administrative hearing, his failure to identify what the evidence was on appeal leaves the Court with no basis upon which to further review his claim.

administrative hearing established that those negative events necessitated a 70% economic obsolescence adjustment on his building pre-fire, an assessed value of zero on his building post-fire, and a negative 95.1% influence factor adjustment on his land for all of the tax years at issue. (See Oral Argument Tr. at 8-9, 11-12; Pet'r Br. at 1-8.)

During each of the tax years at issue, real property in Indiana was assessed on the basis of its "true tax value."⁵ See IND. CODE ANN. §§ 6-1.1-31-5, -6(c) (West 2001) (amended 2002) (footnote added). An improvement's true tax value was equal to its reproduction cost less any physical and/or obsolescence depreciation present therein.^{6,7} See 50 IND. ADMIN. CODE 2.2-10-5(d)(15), -7(f) (2001) (repealed 2002) (footnotes

⁵ Prior to 2002, a property's true tax value was not its market value-in-use; rather, it was its value as calculated under the State Board of Tax Commissioners' assessment regulations. See IND. CODE ANN. § 6.1-1-31-5, -6(c) (West 2001) (amended 2002). Thereafter, a property's true tax value was its market value-in-use. See *id.* See also 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c) (2002 Supp.)) at 2; REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereinafter, Guidelines) (incorporated by reference at 50 I.A.C. 2.3-1-2(c)), Books 1 and 2. The distinction, however, has no bearing upon the outcome of this matter. See *infra* notes 7-9 (explaining that before 2002 the quantifications of both obsolescence and influence factors were linked to market data). Therefore, for the remainder of this opinion the Court will cite primarily to the assessment regulations in effect for the 2001 tax year.

⁶ Reproduction cost was defined as the "whole dollar cost of reproducing the item[.]" 50 IND. ADMIN. CODE 2.2-10-5(d)(13) (West 2001) (repealed 2002). See also Guidelines, Book 2, Glossary at 18 (defining "reproduction cost" as "[t]he cost of constructing an exact replica of a subject improvement, using cost schedules designed from a specific time").

⁷ Obsolescence, a form of depreciation, is the functional or economic loss of property value expressed as a percentage reduction in the remaining value of the subject improvement. 50 IND. ADMIN. CODE 2.2-10-7(e)-(f) (West 2001) (repealed 2002). For example, functional obsolescence (a loss in value caused by internal factors) could be caused by design defects, "the need for modernization, a superadequacy, [or] changes in the tastes of potential buyers." See Guidelines, Book 2, App. F at 4. Economic obsolescence (a loss in value caused by external factors), however, could be caused by environmental elements, "light pollution[,], heavy traffic[,], inharmonious land uses[,], or crime[.]" *Id.*

added). The value of land was determined through the application of county land orders.⁸ See, e.g., 50 IND. ADMIN. CODE 2.2-2-1(c) (2001) (repealed 2002) (footnote added). Land values could be adjusted by influence factors to reflect “characteristics . . . of [that] land that [were] peculiar to that parcel.” See 50 IND. ADMIN. CODE 2.2-4-1(12) (2001) (repealed 2002). See also 50 IND. ADMIN. CODE 2.2-4-10(a)(9)(A)-(G) (2001) (providing seven categories of influence factors) (repealed 2002).

To establish a prima facie case for obsolescence, Curtis must have submitted, during the administrative hearing, probative evidence that both: (1) identified the factors that were causing the obsolescence, and (2) quantified the amount of obsolescence to which he believed he was entitled. See *Meadowbrook N. Apartments v. Conner*, 854 N.E.2d 950, 954 (Ind. Tax Ct. 2005) (citation omitted). More importantly, Curtis must have related the factors (and thus the quantification) of obsolescence to an actual loss in his property’s value. *Id.* (citation omitted). Curtis was also required to make a similar showing in his influence factor adjustment claim: first, he must have identified his land’s deviation from the norm; and then quantified the impact of that deviation on his land’s value.⁹ See *Talesnick v. State Bd. of Tax Comm’rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001) (footnote added).

During the administrative hearing, Curtis claimed that for over thirty years, a

⁸ The county land orders provided base rates for land within each county; the base rates were based upon market data (i.e., comparable sales data). See 50 IND. ADMIN. CODE 2.2-4-5, -17 (2001) (repealed 2002).

⁹ Obsolescence and influence factors both incorporate market value concepts; thus, they may be quantified through the use of market data. See *Phelps Dodge v. State Bd. of Tax Comm’rs*, 705 N.E.2d 1099, 1106 n.14 (Ind. Tax Ct. 1999), review denied; *Canal Square Ltd. P’ship v. State Bd. of Tax Comm’rs*, 694 N.E.2d 801, 806-07 (Ind. Tax Ct. 1998).

series of multi-jurisdictional, interconnected, negative events - directed and controlled by the United States government, the State of Indiana, and the cities of East Chicago and Gary - had caused his property to lose value. (See, e.g., Cert. Admin. R. at 209-10, 214-19, 224-28, 236-38, 251-60.) (See also Cert. Admin. R. at 168-88 (Curtis's "General Form of Affidavit – Discussion").) Curtis asserted that those events, which were directed at several of his properties, resulted in, or consisted of, repeated inverse regulatory takings, third-party physical invasions, and secret investigations.¹⁰ (See, e.g., Cert. Admin. R. at 168-88 (footnote added).) As a result, explained Curtis, his ability to operate his ice cream business was significantly diminished, as he had to relocate that business on several occasions. (See, e.g., Cert. Admin. R. at 174-87.) In the end, Curtis maintained that those events ultimately rendered his property economically unusable, as he "could not [even] sell the land [or] . . . give [it] to the government[.]" (See Pet'r Reply Br. at 7; Cert. Admin. R. at 314-16, 318-19.)

Contrary to Curtis's assertions, however, his evidentiary presentation simply did not demonstrate that his building should have received an obsolescence adjustment or that his land should have received an influence factor adjustment. More specifically, Curtis needed to do more than merely identify random events that may have caused his

¹⁰ An inverse regulatory taking "is a cause of action against an entity with the power to condemn (usually a governmental defendant) to recover the value of property which has been taken in fact, even though no formal exercise of the power of eminent domain has been attempted by the taking agency." *Indiana Dep't of Transp. v. Southern Bells, Inc.*, 723 N.E.2d 432, 434 n.1 (Ind. Ct. App. 1999), *trans. denied*. See also IND. CODE ANN. § 32-24-1-16 (West 2009). In this case, the Court need not (and in fact could not) make any determination as to whether an actual "taking" by inverse condemnation occurred. See, e.g., IND. CODE ANN. §§ 33-26-3-1 to -3 (West 2009) (explaining that the Tax Court is a court of limited jurisdiction). Therefore, in the realm of property taxation, the Court must determine whether Curtis demonstrated that the *alleged* actions of various governmental entities caused a loss of value in his property.

property to suffer a loss in value; rather, he needed to demonstrate that there was a causal link between his property's actual loss of value and the causes of obsolescence and negative influences. See, e.g., *Indian Indus., Inc. v. Dep't of Local Gov't Fin.*, 791 N.E.2d 286, 289-90 (Ind. Tax Ct. 2003); *Champlin Realty Co. v. State Bd. of Tax Comm'rs*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001), *review denied*. See also *supra* pp. 7-8. Here, Curtis has done nothing more than assert that a series of events rendered his property worthless because he believed that it was neither saleable nor useable. Moreover, Curtis has not presented a single calculation which quantified (and would have possibly supported) the *alleged* loss in value to his property. Therefore, the Court cannot say that the Indiana Board's final determination was improper.

CONCLUSION

For the foregoing reasons, the final determination of the Indiana Board is
AFFIRMED.